IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

MISC. PETITION NO.61 OF 2007

Pesi R. Sodawaterwalla ....Petitioner

Mr.Gaurav Joshi i/b Mulla & Mulla & C. B. & C. for the Petitioner.

CORAM : S.J. VAZIFDAR, J.
DATED : 30TH NOVEMBER, 2007.

P.C. :

1. The Petition is filed for a declaration that one Smt.Roshan Tehmurasp Bam be presumed to be dead and for a heirship certificate certifying that the Petitioner, brother of the missing person, is her heir and legal representatives.

2. The Petitioner is the brother of the said Smt.Roshan T. Bam. The said Smt.Roshan T. Bam used to visit her parents and the Petitioner on a regular basis till February, 1997. Thereafter she stopped visiting them. The Petitioner made enquiries with their relatives and friends about her whereabouts. The said missing person was not even found in the residence. The occupant stated that the said residential flat was sold to him by the Petitioner’s

sister.

3. On 22.2.2005 the Petitioner filed a complaint with the Senior Inspector of Police. By a letter dated 24.6.2005, the Police Sub-Inspector informed the Petitioner that the police had no record about the missing person.

4. The Parsi Panchayat by a letter dated 6.11.2006 informed the Petitioner that the names of the missing persons namely said Smt.Roshan T. Bam and her husband were not found in the register maintained at the Tower of Silence.

5. The said missing person is also a beneficiary under a trust. The said missing person had not availed of the benefit under the trust during this time.

6. The procedural requirements have been complied with. There is no opposition or objection filed by any party since 1997. There has been no trace of the missing persons. In the aforesaid circumstances a presumption under Section 108 of the Evidence Act is justified.

7. The Petition is therefore made absolute in terms of prayers (a) and (b).